IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.134 OF 1991

1.Shri Laxman Narayan Kanerkar ..

2.Shri Pandurang Baba Kanerkar
Both adults and residing
at & post Jamsande,
Taluka Deogad, Dist.Singdhudurg .. Petitioners.

Vs.

1.Shri Raghunath Sadashiv Bhide
deceased through his heirs:--
Smt.Sudha Raghunath Bhide
deceased through her heir:--
Sou.Savita Bhaskar Joglekar
C/o.Shri Bhaskar Dinkar Joglekar
37, Budhwar, Near Jogeshwari
Temple, Joglekar Wada, Pune ..

2.Shri Sakharam Tukaram Golam
Adult and residing
at & post :- Jamsande
Taluka Deogad, Dist.Sindhudurg .. Respondents.

Mr.M.V.Limaye for the petitioners.
Mr.S.G.Karandikar for respondent no.1.
Mr.G.R.Rege for resopndent no.2.

CORAM : D.B.BHOSALE,J.

DATED : 19TH OCTOBER, 2004.

ORAL JUDGMENT:

1. This petition under Article 227 of the Constitution is directed against the judgment and order dated 27.8.1990 by which the revision application filed by the respondent no.2 has been

allowed by the Maharashtra Revenue Tribunal (for short "the MRT") setting aside the order passed by the Sub-Divisional Officer, Kankavli, Sindhudurg dated 30th April, 1989 in Tenancy Appeal No.9 of 1987 and confirming the order dated 23.1.1987 passed by the Tenancy Awal Karkoon, Deogad in Tenancy Case No.1 of 1987.

2. Respondent no.2 - tenant filed an application under section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "the Act") on 8.1.1987 bearing Kul Wahiwat Application No.1/87, seeking declaration that he is a tenant in respect of the lands bearing Survey Nos.343/7, 343/9, 344/13, 344/22, 344/32 and 349/5 situate at village Jamsande, Taluka Deogad. One Raghunath Sadashiv Bhide, the predecessor of respondent no.1, was original owner of the said lands. The application filed by respondent no.2 was disposed of by Tenancy Awal Karkoon vide his order dated 27.1.1987 holding that respondent no.2 is a tenant in the said land. That order was challenged by the petitioners in Tenancy Appeal No.9/1987 in respect of only two survey numbers namely 344/22 and 344/32. The order of ALT in respect of other lands was not challenged either by

the petitioners or by respondent no.1-landlord. The Sub-Divisional Officer (for short "SDO"), however, in the appeal quashed and set aside the order passed by the ALT dated 23.1.1987 and remanded the matter for fresh enquiry under section 70(b) the Act in respect of all the survey numbers and directed ALT to decide Tenancy case no.1/1987 afresh after giving an opportunity of being heard to the interested persons. That order of remand was carried in revision before the MRT by respondent no.2-tenant. The order of SDO was challenged before the tribunal mainly on two grounds. Firstly, that the petitioners had no locus standi to challenge the order passed by the ALT in Tenancy Case No.1/1987, and secondly, on the ground that even if it is assumed that the petitioners have locus to challenge the order of ALT, the SDO ought not to have remanded the matter in respect of survey nos.343/7, 343/9, 344/13 and 349/5 which were not the subject matter of the appeal. The MRT allowed the revision application vide order dated 27.8.1990 which is impugned in the instant writ petition.

3. I heard the learned counsel for the parties for quite sometime, perused the judgments and

orders passed by the authorities below and other material placed before me. Mr.Limaye, learned counsel for the petitioners, at the outset submitted that the MRT ought not to have interfered with the order of remand passed by the SDO keeping in view the manner in which the order was passed by the ALT dated 23.1.1987 within a period of 15-20 days from the date of filing of the application dated 8.1.1987 inasmuch as it raises serious doubt about the claim of respondent no.2 as a tenant. He further submitted that there is absolutely no evidence on record to support the case of respondent no.2 that he was a tenant in the said lands. In other words, according to Mr.Limaye, learned counsel for the petitioners, the order of ALT was passed ignoring the collusion between the deceased-landlord and respondent no.2.

3.1 Mr.Karandikar, learned counsel for respondent no.1 adopted the contentions urged by Mr.Limaye, learned counsel for the petitioners and prayed for setting aside the order of the MRT and confirming the order of remand passed by the SDO. On the other hand Mr.Rege, learned counsel for respondent no.2 submitted that the petitioners have no locus standi to challenge the order passed by

the Tenancy Aval Karkoon passed in Tenancy Case No.1/1987 in view of the fact that earlier in 1961 negative declaration was sought by the predecessor of the petitioners that he was not a tenant of the lands of survey no.344/22 and 344/32 and those proceedings were concluded by Tenancy Awal Karkoon on 3.2.1961. He further submitted that in view of the order dated 3.2.1961, even 32-G proceedings were also dropped on 29.6.1961. Those orders were not challenged by the petitioners till this date. He further submitted that in any case the order of SDO in respect of survey nos.343/7, 343/9, 343/13 and 349/5 was without jurisdiction.

4. It is against this backdrop, I perused the impugned judgments and the other material placed before me. The record reveals that the predecessor of the petitioners had sought negative declaration under section 70(b) of the Act that he was not a tenant in respect of survey nos.344/32 and 344/22. Admittedly, the original tenant i.e. predecessor of the petitioner had no concern with other survey numbers. The ALT in Tenancy Case No.2/1961 vide order dated 3.2.1961 declared that the predecessor of the petitioners was not a tenant in respect of Survey No.344/22 and 344/32. Thereafter the

proceedings under section 32-G of the Tenancy Act, were also initiated in respect of those two survey numbers and came to be dropped by the order dated 29.6.1961 in view of the declaration in Tenancy Case No.2/1961 dated 3.2.1961. Admittedly, the orders dated 3.2.1961 and 29.6.1961 were not challenged either by the petitioners or their predecessor. In view thereof both the orders attained finality in the year 1961 itself.

4.1 Mr.Limaye, learned counsel for respondent no.2 made feeble attempt by contending that survey no.344/22 was not the subject matter in Tenancy Case No.2/1961 relying upon the certified copy of the application dated 16.1.1961 and the order passed by the ALT dated 3.2.1961. However, a perusal of the material reveals that Tenancy Case No.2/1961 was in respect of both survey nos.344/22 and 344/32. In my opinion, it was only a clerical error made by the ALT while issuing certified copy of the application and order dated 3.2.1961 which forms a part of the record. The proceedings under section 32-G further make it clear that both the survey numbers were subject matter of the proceedings bearing Tenancy Case No.2/1961.

4.2 Moreover, the SDO while allowing the appeal travelled beyond the jurisdiction and remanded the matter for fresh enquiry in respect of all the survey numbers which were not even the subject matter of the tenancy appeal. In view thereof the order of the SDO cannot be sustained and it was rightly set aside by the MRT.

4.3 Considering that the petitioners lost their right in the suit property in 1961 itself, they have no locus to challenge the order passed in proceedings initiated by respondent no.2 in 1987 under section 70(b). They lost all rights in survey nos.344/22 and 344/32 in 1961 itself and in view thereof the challenge to the orders passed in 1987 by ALT and confirmed by MRT cannot be entertained. The writ jurisdiction is not available to correct mere errors of fact or of law unless the error is manifest and apparent on the face of the proceedings such as when it is based on mere ignorance or utter disregard of the provisions of law and a grave injustice or gross failure of justice has occasioned thereby. The High Court in exercise of supervisory jurisdiction cannot convert itself into court of appeal and indulge in reappreciation or evaluating of evidence or

correct the errors in drawing inferences or correct errors of mere formal or technical character. In the present case two authorities below, namely, ALT and MRT have declared that respondent no.2 as a tenant in the said lands and those findings do not suffer from manifest error on the face of the proceedings or it does not occasion grave injustice or gross failure of justice against the petitioners. The petitioners have lost their right in the lands bearing survey nos.344/32 and 344/22 in the year 1961 itself. They never bothered to challenge the orders passed in the proceedings under section 70(b) and in the proceedings under section 32-G of the Act. Both the orders attain finality in the year 1961. In the circumstances this writ petition fails and is dismissed as such. No order as to costs.

(D.B.Bhosale, J.)